

**STATE OF CONNECTICUT  
CONNECTICUT SITING COUNCIL**

CPV TOWANTIC, LLC MOTION TO REOPEN AND	:	DOCKET NO. 192B
MODIFY THE JUNE 23, 1999 CERTIFICATE OF	:	
ENVIRONMENTAL COMPATIBILITY AND PUBLIC	:	
NEED BASED ON CHANGED CONDITIONS PURSUANT	:	
TO CONNECTICUT GENERAL STATUTES § 4-181A(B)	:	
FOR THE CONSTRUCTION, MAINTENANCE AND	:	APRIL 27, 2015
OPERATION OF A 785 MW DUAL –FUEL COMBINED	:	
CYCLE ELECTRIC GENERATING FACILITY LOCATED	:	
NORTH OF THE PROKOP ROAD AND TOWANTIC HILL	:	
ROAD INTERSECTION IN THE TOWN OF OXFORD,	:	
CONNECTICUT	:	

**PROPOSED FINDINGS OF FACT  
PROFFERED BY  
THE TOWN OF MIDDLEBURY**

In the notice dated March 27, 2015, Melanie Bachman, Executive Director of the Connecticut Siting Council, advised the evidentiary record was closed and repeated the due date of April 27, 2015 for parties and intervenors to submit briefs and findings of fact which had been previously announced at the conclusion of the prior day's final evidentiary hearing . On April 16, 2015, in an open meeting the Council's issued and discussed the initial draft Findings of Fact dated April 10, 2015 ("Draft I") prepared by Council staff in the above-referenced contested proceeding. Formatted as Two hundred sixty-six (266) enumerated Findings, set forth as single-spaced typed paragraphs of various lengths on thirty-nine pages (39) excluding the Appendix, this first draft fairly represents the history of the proceedings since the issuance of the first approval of the 512 MW electric-generating facility at this site in 1999 through the second approval that reviewed the 512 MW facility in its first ten (10) pages. The additional twenty-nine (29) pages set forth the proceedings and description of the on the alternate proposal before the Council divided by the usual categories of review.

However, the plain reading of Draft I, reveals this document as an effort by the Council

staff to cull the record of the substantive facts weighted toward **an approval** of the pending CPV Towantic, LLC 's Motion to Reopen and Modify; not toward a denial. Fairness in the proceedings to this date requires either a separate draft Findings of Fact be prepared that cites the facts weighted toward a denial or within the next draft issued by the Council staff a greater effort be made to cite to the written and oral testimony of the several intervenors and plethora of public comments received in writing over the past twenty-six (26) weeks conspicuously absent in this Draft I. This initial Findings of Fact mentions the eighteen intervenors but provides no summaries and virtually none of the salient points provided in written testimony and cross-examination of the Applicant.

As an intervenor to the proceedings, the Town of Middlebury hereby proffers the following findings of fact with each paragraph prefaced as MIDD#:

1. The Introduction should be reordered to commence with "Jurisdiction, General" (DRAFT I #19- 20) thus # 19 becomes MIDD# 1; #20 should be eliminated as repetitive of DRAFT I #1 which becomes MIDD# 2. Thereafter, setting forth the history of the project chronologically better prefaces the background the subject Motion to Reopen and Modify and thus move the present Council's response to the Petition (DRAFT I #4- 12) once the 16 year prior history is itemized.
2. The first history subsequent to the grant of 1999 Certificate is the Development and Management Plan (DRAFT I #21-28) adopted as MIDD#3- 10.
3. The next phase in the history is the "Requests for Extension of Time" (DRAFT I #26-34) culminating in the current operative deadline (DRAFT I #35) adopted as MIDD#11- 19. The current request for an additional extension is a part of the current application and so should be set forth immediately following the filing date of the Petition (DRAFT I #36) reordered and moved to MIDD#30
4. The next phase in the history is the Prior "Reopenings" as the current matter is listed separately (DRAFT I #37-43) adopted as MIDD#20-26.
5. Finally, the Introduction setting forth the history to date includes the Operating Reports (DRAFT I #44-46) adopted as MIDD#27-29.
6. By reordering the Introduction, particularly removing the detail of the Docket 192B (DRAFT I #4-12) proceedings until after the recitation of the chronological history of the project to date it better frames this unprecedented third Reopening and proposed

modification of all the core elements of the electric generating facility at Oxford. Thus, following the Petition (DRAFT I#3), the inclusion of a further extension of time(DRAFT I#36), and Applicant’s proffered “Changed Circumstances” (DRAFT I#47-48), the Docket 192B proceedings – under the descriptive heading “Hearing Schedule”, together are better clustered and so adopted as MIDD#29, 30, 31-32 and 33-41, respectively.

7. Again, it is disjointed to set forth the “State Agencies Comments” on the current application before the full history of the project is introduced and the relation of the comments to the proposed modifications. Thus, the “State Agencies Comments” (DRAFT I #13-18) are in their usual placement following Procedure (but for this Motion to Reopen and Modify the suggested renaming as “Hearing Schedule”) adopted as MIDD#42-47.
8. The next substantive section, at the core of the Council’s mandate, is the assessment of “Public Benefit” typically placed first after the Introduction/Procedure recitation. Accordingly, “Public Benefit” (DRAFT I #49-60) is next adopted as MIDD#48-59. However, the final four findings of “Public Benefit” (DRAFT I #61-64) are projections of the Applicant with no independent corroboration not appropriate for the Council to adopt as a Fact – unless the Council intends to expand its forecast and delve into projected pollutant levels in New England, wholesale energy cost per consumer, projected household electricity bills in 2024 and jobs produced by individual projects. Accordingly, “Public Benefit” (DRAFT I #61-64) should be deleted in their entirety and so are not adopted as part of proffered Town of Middlebury Finding of Facts.
9. The balance of DRAFT I (#65 – 266) is adopted as part of proffered Town of Middlebury Finding of Facts with the exception of the final “Air Quality Issue” DRAFT I #265 as a substantive conclusion debated throughout the proceedings and not independently supported by any governmental agency. According, “Air Quality Issue” DRAFT I #265 should be deleted.
10. Added in the findings proffered as Town of Middlebury Finding of Facts are two new sections placed in the relevant order to the related section including “Surrounding Area” following “Proposed Site” and “Wetlands – adjacent to site” to follow “Wetlands” renamed for clarity as “Wetlands- at site”. These sections were added to reflect the Council’s usual prevue and mention of the off-site conditions that were lacking in the Applicant’s presentation but developed in the Record by other parties and intervenors. These off-site facts are critical to the determination of environmental impact.
11. The added findings under the proposed headings including “Surrounding Area” following “Proposed Site” and “Wetlands – adjacent to site” to follow “Wetlands” (renamed for clarity as “Wetlands- at site”) are self-explanatory and need no discussion here.

#### Surrounding Area

71. The cluster of residences, previously identified as Triangle Park, located in Middlebury north of the Waterbury –Oxford Airport in [Docket 192 FOF 57] were relocated as part of a noise and safety abatement project funded by the Federal

Aviation Administration.

- 72. Included in the operation at the Waterbury-Oxford Airport is new pilot training that include flights operation with light sport model planes
- 73. The Middlebury Land Trust maintains more than 1219Acres in open space and trails in the Town of Middlebury including Larkin Pond east of the site project
- 74. Additional residences have been build to the Southeast of the site identified as oxford Greens – 360 units build to date but approved for an additional 540 units by the Town of Oxford land use authorities.
- 75. Westover Hills Subdivision is another cluster of residences east of the project site.

Etc. – additional references to the Surrounding Area to the Project Site

Wetlands- adjacent to the site

- 247. The wetland system to the west of the project site associated with the Jack’s Brook is considered valuable because they support a number of important functions and values.
- 248. The area westerly of the project site is suitable for mitigation of the disturbance that occurred to the wetlands on the project site.

Etc. – additional references to the off-site wetlands, watercourses and ecology

12. In order to track the proposed changes of DRAFT I, the following chart is submitted.

Proposed Reordering, Additions and Deletions of DRAFT I  
proffered as Town of Middlebury Finding of Facts

Section Heading	DRAFT I Numbering	Middlebury Numbering	Changes
INTRODUCTION	19	1	Moved
Jurisdiction, General	20	-	deleted
Procedure	1	2	moved
Certificate Status D and M Plan	21 – 25	3-7	moved
Requests for Extensions	26-35	8-17	moved
<u>Prior</u> Reopenings	37-43	18-24	moved

Operative Reports	44-46	26-28	moved
<u>PETITION</u>	3	29	moved
	36	30	moved
Changed Circumstances	47-48	31-32	moved
<u>Hearing Schedule</u>	4 – 12	33-41	moved
State Agency Comments	13-18	42-47	moved
Public Benefit	49-60	48-59	moved
	61-63	-	deleted
Proposed Site	65-71	64-70	moved
<u>Surrounding Area</u>	-	71-81	added
Proposed Project	72-94	82-104	moved
Permits and Approvals	95-110	105-120	moved
Water Use	111-127	121-137	moved
Water Discharge	128-132	137-142	moved
Project Fuel	133-147	143-157	moved
Electrical Interconnection	148-159	158-169	moved
Project Construction	160-166	170-176	moved
Facility Operation	167-175	177-185	moved
Fire Protection And Safety	176-182	186-195	moved
ENVIRONMENT EFFECTS			
Visibility	183-190	196-203	moved
Exhaust Plumes	191-195	204-208	moved
Noise	196-205	209-218	moved
Traffic	206-208	219-221	moved
Historic and Archaeological Effects	209-213	222-226	moved
Geology of the Proposed Site	214-219	227-232	moved

Wetlands – <u>on site</u>	220-233	233-246	moved
Wetlands – <u>adjacent to site</u>	--	247-257	added
Site Ecology	234-251	258-275	moved
Air Quality Issues	252-264	276-288	moved
	265	--	deleted
Solid and Hazardous Waste	266	289	moved

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TOWN OF MIDDLEBURY




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## CERTIFICATION

This is to certify that an original and twenty (15) copies of the foregoing were hand delivered by to The Connecticut Siting council, 10 Franklin Square, new Britain, CT 06051 and one copy of the above was mailed or electronically delivered on this 27<sup>th</sup> day of April 2015, on the applicant, parties and intervenors on the attached service list.

  
\_\_\_\_\_  
Stephen L. Savarese  
Commissioner of the Superior Court

**LIST OF PARTIES AND INTERVENORS**  
**SERVICE LIST**

Status Granted	Status Holder (name, address & phone number)	Representative (name, address & phone number)
<b>Applicant</b>	CPV Towantic, L.L.C.	Franca L. DeRosa, Esq. Philip M. Small, Esq. Brown Rudnick LLP 185 Asylum Street Hartford, CT 06103 (860) 509-6500 (860) 509-6501 – fax <a href="mailto:fderosa@brownrudnick.com">fderosa@brownrudnick.com</a> <a href="mailto:psmall@brownrudnick.com">psmall@brownrudnick.com</a>
<b>Party</b>	Jay Halpern 58 Jackson Cove Road Oxford, CT 06478 h: 203-888-4976 <a href="mailto:zoarmonster@sbcglobal.net">zoarmonster@sbcglobal.net</a>  Peter Thomas 72 Towantic Hill Rd. Oxford, CT 06478 203-720-1536	
<b>Intervenor</b>	Town of Middlebury	Attorney Dana A. D'Angelo Law Offices of Dana D'Angelo, LLC 20 Woodside Avenue Middlebury, CT 06762 (203) 598-3336 (203) 598-7283 – fax <a href="mailto:Dangelo.middlebury@snet.net">Dangelo.middlebury@snet.net</a>  Stephen L. Savarese, Esq. 103 South Main Street Newtown, CT 06470 203-270-0077 <a href="mailto:attystephensavarese@gmail.com">attystephensavarese@gmail.com</a>
<b>Intervenor</b>	The Connecticut Light and Power Company (CL&P)	Stephen Gibelli, Esq. Associate General Counsel The Connecticut Light and Power Company P.O. Box 270 Hartford, CT 06141-0270 (860) 665-5513 (860) 665-5504 –fax <a href="mailto:gibels@nu.com">gibels@nu.com</a>

Status Granted	Status Holder (name, address & phone number)	Representative (name, address & phone number)
	CL&P continued...	<p>John R. Morissette Manager-Transmission Siting and Permitting The Connecticut Light and Power Company P.O. Box 270 Hartford, CT 06141-0270 (860) 665-2036 <a href="mailto:morisjr@nu.com">morisjr@nu.com</a></p> <p>Christopher R. Bernard Manager, Regulatory Policy (Transmission) The Connecticut Light and Power Company P.O. Box 270 Hartford, CT 06141-0270 (860) 665-5967 (860) 665-3314 – fax <a href="mailto:bernacr@nu.com">bernacr@nu.com</a></p> <p>Stella Pace, Senior Engineer The Connecticut Light and Power Company Transmission and Interconnection Dept. P.O. Box 270 Hartford, CT 06141-0270 (860) 665-3569 <a href="mailto:pacess@nu.com">pacess@nu.com</a></p> <p>Jeffery D. Cochran Northeast Utilities Service Company 107 Selden Street Berlin, CT 06037 860-665-3548 <a href="mailto:cochrjd@nu.com">cochrjd@nu.com</a></p>
<b>Party</b>	Town of Oxford	<p>Kevin W. Condon, Esq. Condon &amp; Savitt PC P.O. Box 570 Ansonia, CT 06401 203-734-2511 <a href="mailto:condonsavitt@comcast.net">condonsavitt@comcast.net</a></p>
<b>Party</b>	Naugatuck Valley Chapter Trout Unlimited	<p>Robert M. Perrella, Vice President TU Naugatuck/Pomperaug Valley Chapter 278 W. Purchase Road Southbury, CT 06488-1004 <a href="mailto:johnnytroutseed@charter.net">johnnytroutseed@charter.net</a></p>

<b>Intervenor</b>	Town of Southbury	Ed Edelson First Selectman Town of Southbury 501 Main Street Southbury, CT 06488 <a href="mailto:selectman@southbury-ct.gov">selectman@southbury-ct.gov</a> (203) 262-0647 (203) 264-9762 – fax
<b>Party</b>	The Pomperaug River Watershed Coalition	Len DeJong, Executive Director Pomperaug River Watershed Coalition 39 Sherman Hill Road, C103 Woodbury, CT 06798 203-263-0076 <a href="mailto:LDeJong@pomperaug.org">LDeJong@pomperaug.org</a>
<b>Intervenor (approved 06/07/06)</b>	Raymond Pietrorazio 764 Charcoal Avenue Middlebury, CT 06762-1311 (203) 758-2413 (203) 758-9519 – fax <a href="mailto:ray@ctcombustion.com">ray@ctcombustion.com</a>	
<b>Intervenor (approved 10/10/06)</b>	GE Energy Financial Services, Inc.	Jay F. Malcynsky The Law Offices of Jay F. Malcynsky, P.C. One Liberty Square New Britain, CT 06051 (860) 229-0301 (860) 225-4627 – fax <a href="mailto:jmalcynsky@gaffneybennett.com">jmalcynsky@gaffneybennett.com</a>
<b>Intervenor (Approved on November 13, 2014)</b>	Borough of Naugatuck and Borough of Naugatuck Water Pollution Control Authority	Edward G. Fitzpatrick, Esq. Alicia K. Perillo, Esq. Fitzpatrick, Mariano, Santos, Sousa, PC 203 Church Street Naugatuck, CT 06770 203-729-4555 <a href="mailto:Fitz@fmslaw.org">Fitz@fmslaw.org</a> <a href="mailto:alicia@fmslaw.org">alicia@fmslaw.org</a>  Ronald Merancy, Chairman Water Pollution Control Authority 229 Church Street Naugatuck, CT 06770 203-720-7000 <a href="mailto:Rjm62156@aol.com">Rjm62156@aol.com</a>

<b>Intervenor</b> <b>(Approved on</b> <b>January 8, 2015)</b>	Wayne McCormack 593 Putting Green Lane Oxford, CT 06478 <a href="mailto:wayne@waynemccormack.com">wayne@waynemccormack.com</a>	
<b>Intervenor</b> <b>(Approved on</b> <b>January 8, 2015)</b>	Naugatuck River Revival Group, Inc.	Kevin R. Zak, President Naugatuck River Revival Group, Inc. 132 Radnor Avenue Naugatuck, CT 06770 <a href="mailto:kznrrg@sbcglobal.net">kznrrg@sbcglobal.net</a> 203-530-7850
<b>Intervenor</b> <b>(Approved on</b> <b>January 8, 2015)</b>	Westover Hills Subdivision Homeowners	Chester Cornacchia Westover Hills Subdivision Homeowners 53 Graham Ridge Road Naugatuck, CT 06770 203-206-9927 <a href="mailto:cc@necsonline.com">cc@necsonline.com</a>
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